

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,)	
)	
Plaintiff,)	Civil Action No. 04-253E
)	
v.)	Hon. Sean J. McLaughlin
)	U.S. District Judge
TIM HOLOHAN, <u>et al.</u> ,)	
)	Hon. Susan Paradise Baxter
Defendants.)	Chief U.S. Magistrate Judge
)	
)	ELECTRONICALLY FILED
)	

**DEFENDANTS' MOTION TO STAY FILING OF
PRETRIAL STATEMENTS PENDING RESOLUTION
OF MOTION TO DISMISS**

AND NOW, come the Defendants, Tim Holohan, et al., by and through their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania; Paul Kovac, Assistant United States Attorney for said district; and Douglas S. Goldring, Assistant General Counsel for Federal Prison Industries, Inc., and respectfully request that the filing of pretrial statements in this case be stayed pending final disposition of Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment previously filed with this Court on December 7, 2006. See Docket Nos. 63 & 64. In support of this Motion, Defendants aver as follows:

1. Plaintiff's Complaint was received by the Court in this case on or around September 8, 2004, and was filed on or around January 12, 2005. See Docket Nos. 1, 6. On or around

November 14, 2005, Defendants submitted a Motion to Dismiss and Memorandum of Law in Support. On May 9, 2006, the Court issued a Report and Recommendation granting in part and denying in part Defendants' Motion to Dismiss.

2. After Objections were filed, the Court issued an Amended Report and Recommendation ("Amended R & R") on July 18, 2006. The Amended R & R granted Defendants' Motion to Dismiss with regard to Plaintiff's Federal Tort Claims Act and Eighth Amendment allegations. The Court denied that portion of the Motion to Dismiss seeking dismissal of the retaliation claim. On August 21, 2006, Judge McLaughlin adopted the Amended R & R.

3. On August 23, 2006, this Court issued a Case Management Order setting a discovery schedule on the sole remaining retaliation allegation. Discovery in this case closed on November 21, 2006.

4. On December 7, 2006, Defendants filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, requesting that the Court dismiss the remaining retaliation claim. Plaintiff's response to this motion is currently due on December 29, 2006.

5. Pursuant to a Text Order dated December 12, 2006, Plaintiff's Pretrial Statement is currently due on January 10, 2007. However, this Order says nothing about the due date for

Defendants' Pretrial Statement. Thus, Defendants are still bound by this Court's Case Management Order dated August 23, 2006 (Docket No. 53) directing Defendants to file their Pretrial Statement by January 2, 2007.

6. In the pending Motion to Dismiss, Defendants request that the Court dismiss the sole remaining allegation in the Complaint. Should this motion be granted, the case would obviously be resolved, thereby obviating the need for pretrial statements. Accordingly, in the interests of judicial economy, Defendants respectfully request that the current filing deadlines for pretrial statements be staying pending final resolution of the Motion to Dismiss.

7. The granting of this motion will not prejudice Plaintiff. In fact, it will eliminate the need for Plaintiff to file his Pretrial Statement by January 10, 2007, thus enabling him to concentrate on responding to the Motion to Dismiss.

WHEREFORE, Defendants respectfully request that the Court issue an Order staying the filing of the pretrial statements of both parties pending final resolution of the Motion to Dismiss. A proposed Order is attached.¹

Respectfully submitted,

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Dated: December 15, 2006

¹ Should the Court deny this Motion, Defendants request that their Pretrial Statement be filed after Plaintiff's Pretrial Statement. Defendants propose that February 9, 2007, is a reasonable date for the filing of Defendants' Pretrial Statement and request that such an Order, if necessary, be entered as a Text Order on the Court's docket.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2006, I electronically filed and mailed via first-class mail, a true and correct copy of **DEFENDANTS' MOTION TO STAY FILING OF PRETRIAL STATEMENTS PENDING RESOLUTION OF MOTION TO DISMISS** to the following:

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s/Paul D. Kovac
PAUL D. KOVAC
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